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YALE LAW JOURNAL, 77. The cases cited above show, however, that this rule is by no means limited to that extent. Some courts hold that the old common law is no longer applicable to modern American conditions; possibly this view was a result of the more general use of fire-arms. Others put it on the basis that the privilege to stand ground to prevent a felony includes the privilege to prevent felonious attacks on one's own person, as well as to prevent some other felony, such as robbery, etc. *State v. Dixon* (1876) 75 N. C. 275; *Ragland v. State* (1900) 111 Ga. 211, 36 S. E. 682. However that may be, it has long been recognized that the privilege to pursue an assailant who is attempting to commit murder or inflict serious physical injury was essential to make complete the privilege of self-defence. See 1 East, *Pleas of the Crown* (1806) 271, 272. Comparatively few cases have been decided on this point. There seems to have been some extenuating circumstance in almost every instance. *Luby v. Commonwealth* (1876, Ky.) 12 Bush, 1 (attack made when the assailant was on the premises of the accused); *Stoneham v. Commonwealth* (1890) 86 Va. 523, 10 S. E. 238 (attempt to rob the accused); *Conner v. State* (1893, Miss.) 13 So. 934 (assailant retired to procure a deadly weapon with which to renew the contest); *State v. Thompson* (1893) 45 La. Ann. 969, 13 So. 392 (several persons made the attack); *Stanley v. State* (1898 Tex. Cr. App.) 44 S. W. 519 (assailant was retreating to a more favorable position). The last of the cases cited comes very close to the situation in the principal case. The decision is in accord with what has been the general tendency of development in this line of cases.

DAMAGES—CONSEQUENTIAL DAMAGES—NOTICE.—In response to a telegram from the plaintiff, the department of agriculture of the State of Virginia delivered to the defendants a package of hog cholera serum consigned to the plaintiff. At the time of the shipment the consignor notified the defendant of the nature of the article shipped and the necessity for a quick delivery. As a result of the defendant's negligence, the article was not delivered until one week later. The plaintiff brought this action on the contract between the consignor and the defendant, a provision of which made it enure to the benefit of the consignee, alleging that, as a result of their inexcusable delay, he was deprived of the use of the serum as a preventive treatment, and thereby lost certain hogs by death from cholera. There was evidence that the serum was successful as a preventive treatment in about ninety *per cent.* of the cases. This serum was prepared only by the department of agriculture to be distributed directly to owners of hogs solely for the purpose of preventing disease which was not epidemic at the time. *Held*, that the plaintiff should recover damages for the loss of the hogs. *Allen v. Adams Express Co.* (1919, Va.) 100 S. E. 473.

It is generally stated by the courts in actions for breach of contract, that recovery can be had for such damages only as are the natural and probable consequence of the breach; that unusual or special damages are not recoverable unless they ought reasonably to have been contemplated by the parties when the contract was made. *Cf. Hadley v. Baxendale* (1854) 9 Exch. 541; *cf. Cohen v. Norton* (1889) 57 Conn. 480, 18 Atl. 595. But the same test was evidently applied in determining ordinary damages as in the case of special damages, for a decision that damages are "ordinary" is in itself a holding that they should reasonably have been contemplated. See *Smith* (1900) 16 L. QUART. REV. 277. In neither case is it necessary that the parties actually foresee the consequences. The test is purely an objective one. See *Hydraulic Engineering Co. v. McHaffie* (1878) 4 Q. B. D. 670, 677. What circumstances are sufficient to constitute notice to the average man situated as is the defendant, is usually a question of fact for the jury. *Southern R. R. v. Longley* (1913) 184 Ala. 524, 63 So. 545. It has been held that the nature of the article shipped is sufficient evidence from which the jury may find notice. *Weston v. Boston and Maine R. R.* (1906) 190

Mass. 298, 76 N. E. 1040 (contract for the carriage of theatrical goods—ordinary damages sought); *Story Lumber Co. v. Southern R. R.* (1909) 151 N. C. 23, 65 S. E. 460 (contract for the carriage of a saw-mill edger—special damage sought). As applied to the facts in the principal case, in the absence of any showing that the manner of distribution of the serum directly to the user was a matter of general information, it may be doubted that there was sufficient evidence of notice to go to the jury. The argument has been made that the burden of special damages as a consequence of notice should not be imposed on carriers, because the carrier has not the privilege of refusing to enter into such contracts. See *Horne v. Midland R. R.* (1873) 8 C. P. 131, 137; see *Loneragan v. Waldo* (1901) 179 Mass. 135, 140, 60 N. E. 479, 481. But it is suggested that this additional burden may properly be considered merely another incident of the defendant's valuable franchise. See (1917) 26 YALE LAW JOURNAL, 252.

EVIDENCE — PRESUMPTIONS — ALTERATION OF INSTRUMENTS. — The plaintiff brought this action on a written contract by which the defendant's intestate agreed, in consideration of certain services to be rendered to him by the plaintiff, that the plaintiff should receive all the property of which the intestate might be possessed at the time of his death. The defendant, who was the administrator of the intestate, offered a check for \$200. given by the intestate to the plaintiff, on the face of which appeared the words "\$300. due on demand in full of all demands to date," as evidence of an accord and satisfaction. The plaintiff denied that the alleged indorsement was on the check when she cashed it, and the defendant offered no evidence to rebut her denial. The trial court gave judgment for the plaintiff for \$300. only. *Held*, that there was no evidence to sustain the finding of the trial court. *Evans, J. dissenting. Kauffman v. Logan* (1919, Iowa) 174 N. W. 366.

Although there are jurisdictions which hold to the contrary, the view that a true presumption, in itself, carries no weight as evidence is now upheld by the best authorities. See Thayer, *Preliminary Treatise on Evidence* (1898) 549, and Appendix B; *Agnew v. United States* (1897) 165 U. S. 36, 17 Sup. Ct. 235; *Peters v. Lohr* (1910) 24 S. D. 605, 124 N. W. 853. Where it is alleged that an alteration has been made which is apparent upon the face of an instrument, there is a hopeless conflict of authority as to whether or not there is any presumption as to whether the alteration was made before or after delivery. But where the alteration is not apparent, there is a presumption that the instrument was delivered as it appears. *Anderson v. Chicago & N. W. Ry.* (1911) 88 Neb. 430, 129 N. W. 1008; *Laurence v. Meenach* (1907) 45 Wash. 632, 88 Pac. 1120. The majority of the court, in the principal case, appear to have accepted the view that the alteration was apparent on the face of the instrument and that the defendant had, at most, the presumption in his favor that the check was in its present state when cashed by the plaintiff. The dissenting opinion, however, seems to adopt the view that the alteration was not apparent on the face of the instrument and that this fact raised more than a mere presumption that the instrument was originally as it appeared at the trial. Assuming that the alteration was not apparent it is submitted that the dissenting opinion is sound. It is admitted that where a mere presumption, unsupported by evidence, is rebutted by direct testimony, there is no case to go to the jury. But here the check itself was evidence. *Cf.* N. I. L. sec. 123. It has been clearly held that where there is a dispute as to the true tenor of a written instrument the appearance of the instrument itself may furnish satisfactory explanation without "extrinsic" evidence. *Hutchison v. Kelly* (1916) 276 Ill. 438, 114 N. E. 1012. If this doctrine, which is believed to be correct, had been applied in the instant case, there would have been evidence from which the trial court could have found as it did.